

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD W. ISTRE,

Plaintiff,

v.

FLYING J TRAVEL PLAZA OF
HOUSTON,

Defendant.

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CIVIL ACTION NO. H-05-3537

MEMORANDUM AND ORDER

The Court held a hearing on January 3, 2007 to address Defendant's Motion in Limine, Docket No. 33. Having considered the parties' submissions and arguments, the Court finds that the motion should be and hereby is **GRANTED IN PART, DENIED IN PART.**

As stated at the hearing, Dr. Nelson will be allowed to testify as an expert on general industry safety standards. However, Plaintiff may not introduce testimony regarding any code or regulation that addresses accessibility and safety standards for handicapped individuals, including but not limited to: 1) American National Standard – Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A117.1); 2) Texas Accessibility Standards of the Architectural Barriers Act; 3) U.S. Department of Justice Accessibility Guidelines of the Americans with Disabilities Act; 4) American Society for Testing and Materials – Standard Practice for Safe Walking Surfaces (ASTM F 1637); 5) any provisions of the International Building Code, Standard Building Code, or Uniform Building Code that incorporate, refer to, or mimic provisions of ANSI A117.1; 6) any provisions of the Life Safety Code (NFPA 101) that incorporate, refer to, or mimic provisions of ANSI A117.1. Because Plaintiff has not pled any disability, these codes and regulations are irrelevant and potentially confusing to a jury.

Expert testimony referring to a general safety code or regulation (*i.e.* one *not* specifically directed towards handicapped accessibility) will be allowed, provided that Plaintiff discloses whether the code being referenced statutorily applied to Defendant's facility at the time of Plaintiff's accident. Finally, testimony regarding change in elevation will be allowed only to the extent that it conforms to this ruling.

IT IS SO ORDERED.

SIGNED this 4th day of January, 2007.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT